

Hotel Holiday Inn de Isla Verde and Gloria Ester Andrades and Juan Rivera Malave and Miguel Montalvo. Cases 24-CA-4535, 24-CA-4536, and 24-CA-4540

December 16, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On April 12, 1982, Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusion of Law 3:

"3. By unlawfully discharging and refusing to reinstate Gloria Andrades and Miguel Montalvo, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent,

Hotel Holiday Inn de Isla Verde, Carolina, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Offer Gloria Andrades and Miguel Montalvo immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered in the manner set forth in the section entitled 'The Remedy.'"

2. Insert the following as paragraph 2(c) and reletters the subsequent paragraphs accordingly:

"(c) Expunge from its files any references to the discharges of Gloria Andrades and Miguel Montalvo on February 9, 1981, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them."

3. Substitute the attached notice for that of the Administrative Law Judge.

CHAIRMAN VAN DE WATER, concurring and dissenting:

I agree with my colleagues that Respondent lawfully refused to reinstate Juan Malave. I would also find, however, that Respondent acted lawfully in refusing to reinstate Gloria Andrades and Miguel Montalvo as well. In so concluding, I find it unnecessary to decide whether the conduct of the three individuals in question justified Respondent's refusals and would rely, instead, on the failure of the three to comply with the settlement agreement negotiated between the Union and Respondent.

The record reveals that on February 25 Respondent and the Union reached agreement on the settlement of the strike and the reinstatement of strikers. The collectively bargained agreement set forth several "give and take" terms such as providing for the dropping of criminal charges against strikers and the waiver of civil or criminal actions against Respondent by strikers. The agreement further provided specific reporting dates for individually listed employees with 9 a.m., on February 28, being the final reporting day. The agreement stated that the Union urged "all the employees to go on the exact date and hour designated by management to sign the stipulation, or else, *they would definitively cease in their employment.*" (Emphasis supplied.) The agreement also emphasized that no excuses for late reporting would be accepted. Respondent was vested with discretion to allow a later reporting date than assigned, but not later than 9 a.m., Febru-

¹ We note that in sec. III,B, the Administrative Law Judge incorrectly noted that "Malave" had not been replaced. It should have read that "Montalvo" had not been replaced.

² We find that in violating Sec. 8(a)(3), Respondent also violated Sec. 8(a)(1) of the Act and we amend the Conclusions of Law accordingly. We also amend the Conclusions of Law to reflect the fact that Respondent violated Sec. 8(a)(1) and (3) of the Act when it refused to reinstate Montalvo and Andrades.

³ We have modified the Administrative Law Judge's recommended Order to include the full reinstatement language traditionally provided by the Board.

We have also modified the Administrative Law Judge's recommended Order to require Respondent to expunge from its files all references to the discharges. We have modified the proposed notice to conform with the recommended Order.

Members Fanning and Zimmerman find that *United Aircraft Corporation (Pratt and Whitney Division)*, 192 NLRB 382 (1971), cited in Chairman Van de Water's dissent does not apply. Andrades and Montalvo were discharged in violation of Sec. 8(a)(3) and (1) and were therefore entitled to unconditional reinstatement apart from the terms of the agreement negotiated by the Union. See *N.L.R.B. v. International Van Lines*, 409 U.S. 48 (1972).

ary 28. Finally, in case the point had not been made, the agreement reiterated that "after such date and hour, [February 28, 9 a.m.] nobody else will be accepted under any excuse." Significantly, Andrades, Malave, and Montalvo were present at the meeting where the agreement was finalized.

As found by the Administrative Law Judge, none of the three in question reported either on their assigned date or on February 28. Instead, they appeared on March 2. Montalvo and Andrades claimed they did not report for medical reasons. Malave cited his obligation to umpire at a little league baseball game. All three claimed that they were unsuccessful in their efforts to reach Respondent and explain their failure on February 28. The Administrative Law Judge found, however, that "the record casts some doubt about the validity of their reasons for not reporting as assigned and in their efforts to contact [Respondent]."

Confronted with the blatant and unexcused failure of these three individuals to comply with the collectively bargained for reinstatement agreement, the Administrative Law Judge termed their failure "not material," holding that "A union and an employer may not restrict an individual's right to reinstatement by negotiating more stringent terms of reinstatement for them than those available under existing law." I cannot agree.

Putting aside the doubtful premise that the settlement agreement represents "more stringent terms . . . than those available under existing law," the Administrative Law Judge's assertion misstates the law. In *United Aircraft Corporation (Pratt and Whitney Division)*, 192 NLRB 382, 388 (1971), the Board undertook a thorough analysis of a respondent's obligation in reinstating strikers pursuant to a freely bargained reinstatement agreement. It held as follows:

If, as the Supreme Court has held, an employer can unilaterally terminate the reinstatement rights of economic strikers for legitimate and substantial business reasons, it would seem that such rights should also be terminable by agreement between the employer and the bargaining representative of the strikers. They are in the most favored position to know the business needs of the employer and the prospects of substantially equivalent employment elsewhere. A union may also by agreement obtain other benefits for employees in return for a concession as to a reinstatement cutoff date. So long, therefore, as the period fixed by agreement for the reinstatement of economic strikers is not unreasonably short, is not intended to be discriminatory, or misused by either party with the object of accomplishing a

discriminatory objective, was not insisted upon by the employer in order to undermine the status of the bargaining representative, and was the result of good-faith collective bargaining, the Board ought to accept the agreement of the parties as effectuating the policies of the Act which, as we have previously stated, includes as a principal objective encouragement of the practice and procedure of collective bargaining as a means of settling labor disputes.

I fully endorse the sound principles set forth above and find, in the instant case, the enumerated criteria for acceptance of the agreement have been met. Accordingly, I would find that Respondent acted lawfully in refusing to reinstate Malave, Andrades, and Montalvo.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Gloria Andrades and Miguel Montalvo immediate and full reinstatement to their former jobs, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of pay they may have suffered as a result of our discrimination practiced against them, plus interest.

WE WILL expunge from our files any reference to the discharges of Gloria Andrades and Miguel Montalvo and notify them in writing this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against them.

HOTEL HOLIDAY INN DE ISLA VERDE

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge: The charges in Cases 24-CA-4535 and 24-CA-4536 were

filed by Gloria Ester Andrades and Juan Rivera Malave, individuals, on June 22, 1981. The charge in Case 24-CA-4540 was filed on July 7, 1981, by Miguel Montalvo, an individual. An order consolidating cases, complaint, and notice of hearing thereon was issued on August 29, 1981, alleging that Hotel Holiday Inn de Isla Verde, herein called the Employer or Respondent, violated Section 8(a)(3) of the Act by discharging and refusing to reinstate Andrades, Malave, and Montalvo. An answer thereto was timely filed by Respondent. Pursuant to notice a hearing was held before the Administrative Law Judge at Hato Rey, Puerto Rico, on November 12, 13, 16, and 17, 1981. A brief was timely filed by the General Counsel which has been duly considered.

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

The Employer is a Puerto Rico corporation engaged in the operation of a hotel providing lodging, entertainment, a gambling casino, food, beverage, and related services for guests and the general public in the city of Carolina, Puerto Rico. During the past year the Employer derived gross revenues in the course and conduct of its hotel operations in excess of \$500,000. The Employer also purchased and caused to be transported and delivered to its hotel foodstuffs, beverages, and other goods and materials valued in excess of \$50,000, of which, goods and materials valued in excess of \$50,000 were transported and delivered to it in interstate commerce directly from places located outside the Commonwealth of Puerto Rico. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union de Tronquistas de Puerto Rico, Local 901, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts¹

The Respondent and the Union were parties to a collective-bargaining agreement covering certain hotel employees which expired on December 31, 1980. After a period of unsuccessful negotiations on a new contract, the Union struck Respondent on February 2, 1981.²

¹ There is conflicting testimony regarding the allegations of the complaint. In resolving these conflicts I have taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness, and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness, I rely specifically upon his or her demeanor and make my findings accordingly. And while apart from considerations of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop and Malco, Inc., d/b/a Walker's*, 139 NLRB 1159, 1161 (1966).

² All dates refer to 1981 unless otherwise indicated.

During the course of the strike, which ended on February 23, Respondent discharged 13 of the striking employees for alleged misconduct related to their activities as pickets. Among the discharged employees were Montalvo, Malave, and Andrades.

As to Malave, it appears that on the evening of February 4, at or about midnight, David Maza, owner and president of Respondent, and Jose Rivera, Respondent's chief of security, were returning to the hotel after having taken a guest to the airport. Maza was driving and Rivera was seated on the passenger side.³ Maza stopped at the picket line just in front of Malave, who then struck the hood and window of the car on the driver's side. As Malave spoke to him at the window on the driver's side, Maza lowered the window slightly. Maza testified that Malave hit the window with both hands and called him an "imperialist" and a cuckold and, according to Maza, said that he was going to kill him. Maza testified that he did not respond to these remarks and that he drove away quickly to the hotel. Once at the hotel, he directed Rivera to file criminal charges against Malave for threatening him. This was done on February 10, which charges were still pending at the time of the hearing in the instant case. Maza's testimony was substantially corroborated by Rivera. After discussing the matter with Maza, Carlos Luna, Respondent's director of personnel, discharged Malave by letter dated February 5.

Malave testified that he approached the car and spoke to Maza through the window on the passenger side and that he did not threaten to kill Maza. According to Malave, he only asked Maza to negotiate; that the strikers were only asking for what belonged to them, and that Maza responded to these remarks by grabbing his "intimate parts" and saying "this is what I am going to give you" and "I am going to fire you, you creep." Despite the fact that some corroboration for Malave's version was provided by Vilma Maldonado, a complete review of the record satisfies me that the more accurate version of the incident is reflected in the testimony of Maza and Rivera, and I credit that account. Another incident occurred in the early morning of February 7, involving Malave. Jose Maldonado, a security guard at the hotel, testified that at or about 1:30 a.m. a group of about four pickets had congregated some 40 feet away as he was checking the third floor of the hotel. According to Maldonado, this group, which included Malave, began to taunt him calling him a jerk and telling him that he would have to come down after the strike. They also began to throw stones at him and the hotel property, breaking windows in two of the rooms. Maldonado testified that Malave was one of the pickets throwing rocks. Maldonado drew his revolver and fired two shots into the air, disbursing the group on the run back towards the picket line. Criminal charges were filed against Malave in connection with this incident which were still pending at the date of the hearing. By letter dated February 9,

³ Malave and another employee, Vilma Maldonado, testified that it was an individual named Victor Franco, identified as a police detective, rather than Rivera in the car. However, both Maza and Rivera testified that it was Rivera in the car with Maza and I am satisfied that this was the case.

from Luna, Malave was again discharged from the employ of Respondent, this time because of the rock-throwing incident as well as the prior incident.

Malave testified that on the evening of February 6 he was at the picket line but that he left at or about 10 p.m. with his wife and son several hours before the rock-throwing incident. This testimony is corroborated by his wife and Vilma Maldonado, another picket. However, a review of the competent testimony and the entire record, including the positive identification by Maldonado, persuade me that Malave was one of the participants in this rock-throwing incident.⁴

With respect to Montalvo, it appears that on the evening of February 7 he had been picketing until he left the picket line to go home at or about 5 on the morning of February 8. Feeling the urge to urinate, he attempted to use the bathroom in a nearby restaurant, but it was occupied, so he proceeded to relieve himself in some bushes near the hotel parking lot. As he was coming out, he saw an ice pick, about 2-1/2 inches long, on the ground in front of him. He picked it up and put it in his "waist." Shortly thereafter, as he got to the sidewalk, Reinaldo Alvarez, a police officer, grabbed him, handcuffed him, searched him, and found the ice pick. He then took Montalvo to the police station where he was charged with possession of an illegal weapon. It appears that on this same night the tires of several autos had been punctured on the hotel parking lot; however, Montalvo was charged only with possession of an illegal weapon, not with damaging the autos.⁵ Apparently, the charge was still pending at the time of the hearing in the instant case.

After Respondent became aware of the charge against Montalvo, Luna discussed the matter with Maza and a decision was made to fire Montalvo, which was accomplished by a letter from Luna to Montalvo dated February 9. That portion describing the incident reads:

Yesterday, Sunday, February 8th, 1981, around 5:15 a.m., you were surprised and arrested by the police because you had with you an ice pick 2-1/2 inches long which is prohibited to use by law in the parking of the hotel causing damages to the vehicles parked therein.⁶

With respect to Andrades, it appears that she was one of the strikers who used a loudspeaker on the picket line. According to Luna, beginning on the first day of the strike on February 2 until February 5 or 6, women using the loudspeaker, including Andrades, used profane language in addressing hotel employees, guests, security guards, and hotel management, as they went into the hotel. Malave also testified that she used the words "cuckold" and "dirty slut" in addressing strikebreakers, and "cuckold" in addressing Maza. By letter dated February 9, from Luna, Andrades was discharged. The letter read:

During the past few days you, using a loudspeaker, proffered obscene words towards Mr. David Maza and his family and other employees of the Hotel calling them cuckolds, sluts, and using derogatory language harmful to the integrity of these persons.

Also acting in a threatening way to prevent the guests of the hotel from entering the same, for they feared for their safety upon observing your attitude.

With these actions on your part, you leave us no alternative but to discharge you from your employment at the hotel definitively.

Luna also testified that he had personally observed Andrades using the loudspeaker and speaking as described in the letter. After her discharge Andrades applied for unemployment compensation which was denied by the Department of Labor of Puerto Rico on the grounds that her own improper conduct had provoked her discharge.

Andrades denied using the word "cuckold," but conceded using the Spanish word "bronca" (fight) and that a repetition of the word "bronca" did sound like the Spanish word for cuckold "cabron." She denied calling anyone "cuckold" or "slut" and further testified that on February 3 Maza from a distance of about 15 feet, at the hotel gates, in addressing the pickets, said, "what you are going to get as an increase is this, and he held his penis." Maza was not questioned about this incident.

On February 24 and 25 discussions were held between officials of Respondent and the Union in an effort to end the strike. On February 25 an agreement was reached between them in a meeting held at the office of Respondent's attorney, Ramos Acosta, which included Acosta and Luna, as well as union representatives. Enrique Pagan, secretary-treasurer; Francisco J. Rivera, general shop steward; and Andres Rivera, a union delegate. Also at the office, but not, with the exception of Francisco Rivera, participating directly in the discussions, were 12 of the 13 employees who had been discharged during the strike, including Andrades, Montalvo, and Malave. After some discussion, an agreement was reached between the parties, which was reduced to writing and executed by Pagan and Acosta. This agreement was captioned "Minutes" and incorporated two other documents, a listing of the discharged employees and a "Stipulation." The minutes provided for the reinstatement of the strikers upon reporting to Luna's office and signing the stipulation.

The stipulation, set up for signature by Respondent, the Union, and the individual discharged employee, is essentially an agreement providing for a 3-, 4-, or 5-day suspension beyond the end of the strike on February 23 as set out in the minutes. The stipulation also provides that Respondent would withdraw any "charge or criminal case" against the employee for picket line misconduct, as well as an agreement by the employee to waive any criminal or civil action against the Employer for "any actions, arrests, or charges filed or presented against him/her." The minutes also listed each discharged striker and assigned a date to report to Luna's office to sign the stipulation. The dates ran from February 26 through February 28. On those dates, each was to report to Luna's office, sign the stipulation, and be given

⁴ It is also significant to note that none of the rock-throwing pickets identified by Maldonado was called to testify to his absence.

⁵ Alvarez did not testify at the hearing.

⁶ The above Spanish to English translation is a more accurate translation than that contained in the exhibit (G.C. Exh. 4(a)) and was provided by the interpreter at the hearing.

a reporting time. The minutes also recite that the Union was recommending the signing of the stipulation by the dischargee and that "all the employees to go on the exact date and hour indicated by management to sign the stipulation, or else, they would definitively cease in their employment." The minutes also provided that no excuses for late reporting would be accepted, but that management could in its discretion allow employees to report later than the assigned date, but not later than 9 a.m. on February 28. The minutes further provided "after such date and hour, nobody else will be accepted under any excuse." All of the 12 dischargees at Acosta's office were made aware by their union representatives of the terms of the minutes and stipulation. Andrades was assigned a reporting date of February 26, while Malave and Montalvo were assigned February 28.

However, none of them reported on their assigned dates. All three came to Luna's office on Monday, March 2, at various times, and were advised by Luna that they would not be permitted to sign the stipulation, and would not be reinstated because they had not reported within the agreed on time limits.

All three offered excuses for their inability to report on their assigned dates, Montalvo and Andrades for medical reasons and Malave because he was obligated to umpire at a little league baseball game. All of them testified that they had attempted to contact Luna on the morning of February 28 to explain their inability to report, but that they were unable to reach him. The record casts some doubt about the validity of their reasons for not reporting as assigned and in their efforts to contact Luna; however, for the purposes of this Decision, any failure on their part to comply with the terms of the minutes is not material.

B. Analysis and Conclusions

It is well established, as a matter of Board and court law, that economic strikers who have not been replaced prior to the end of a strike are entitled to reinstatement unless they have been replaced or unless there exists other sufficient legal justification for an employer to deny them reinstatement, such as picket line misconduct. There is nothing in this record to suggest that Andrades, Montalvo, or Malave had been replaced by March 2 when they reported to Luna's office seeking reinstatement.

However, the basic question remains, i.e., whether or not Respondent was justified in discharging them during the strike because of their alleged misconduct on the picket line, since serious picket line misconduct has been held to justify the discharge of striking employees, and the refusal to reinstate them after the strike.

In examining the picket line misconduct of Andrades, I am satisfied that she did use the offensive language set out above. However, while the Board has never condoned the use of such language, it has consistently held that the use of such language on a picket line by economic strikers is not sufficient justification for discharge. Accordingly, I conclude that Respondent's discharge and

refusal to reinstate Andrades violated Section 8(a)(3) of the Act.⁷

As to Montalvo, the record discloses only that he was arrested by the police and charged with possession of a dangerous weapon; i.e., an ice pick 2-1/2 inches in length. Montalvo conceded at the hearing that he did have such an ice pick in his possession since he had just previously found it on the ground, and whatever defenses may be available to Montalvo on that charge are unknown since that charge had not been resolved, at least at the time of the hearing. But Respondent also contends that Montalvo was responsible for puncturing the tires on several automobiles in Respondent's parking lot. Montalvo was never charged with such misconduct in the criminal matter and the circumstantial evidence produced by Respondent at the hearing in the instant case was totally unconvincing to show that Montalvo punctured any automobile tires in Respondent's parking lot, whatever Respondent's suspicions may be. Indeed, the arresting officer was not even called as a witness at the hearing to substantiate Respondent's position. In summary, the record shows only that Montalvo, away from the picket line, was arrested and charged with possession of a dangerous weapon, which charge is unresolved. I cannot conclude that having in one's possession on a 2-1/2-inch ice pick, without more, constitutes sufficient justification for the discharge of a striking employee. Accordingly, I find that Respondent violated Section 8(a)(3) of the Act by discharging and refusing to reinstate Montalvo.

Turning to the circumstances involving Malave's discharge, it appears that he was originally discharged for the use of obscene and threatening language towards Maza at the picket line on the early morning of February 5. Indeed, the record does reflect that Malave hit Maza's automobile on the hood and window and, *inter alia*, called him various unflattering names and threatened to kill him, all of which prompted the filing of criminal charges in connection with the death threat. Malave was discharged a second time on February 9 for throwing rocks at the hotel and smashing two glass panels in two hotel rooms. Criminal charges were also filed in connection with that incident. Both charges were unresolved at the time of the hearing. As to the rock-throwing incident, while the record does not establish that Malave threw the rocks that damaged the windows, it does show that he threw rocks in the direction of the hotel. These incidents convince me that Malave's misconduct was sufficiently flagrant as to warrant his discharge, and that because of this misconduct Respondent was under no obligation to rehire him when the strike ended.

With respect to its refusal to reinstate these employees, Respondent argues that all three were bound by the terms of the agreement reached with the Union in the minutes and that, when they failed to report on the dates provided therein, they forfeited any right to reinstatement. I do not agree. Economic strikers are entitled to

⁷ While it appears that Andrades was disqualified for unemployment benefits by the Department of Labor of Puerto Rico on the grounds that her misconduct provoked her discharge, such a finding is not conclusive in determining the unfair labor practice issue, and I decline to follow it.

reinstatement at the conclusion of the strike unless they have been replaced. Nothing in this record indicates that either Malave or Andrades had been replaced at the time Respondent refused to reinstate them on March 2. A union and an employer may not restrict an individual's right to reinstatement by negotiating more stringent terms of reinstatement for them than those available under existing law. In the instant case the discharged strikers did not participate in the negotiation of the agreement. While most of the discharged strikers could and did obtain reinstatement under the terms of the negotiated agreement, the failure of Montalvo and Andrades to do so does not deprive them of their right to an adjudication under the provisions of the National Labor Relations Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent discharged Gloria Andrades and Miguel Montalvo for reasons which offended the provisions of Section 8(a)(3) of the Act, and I shall therefore recommend that Respondent make them whole for any loss of pay which they might have suffered as a result of the discrimination practiced against them. The backpay provided herein with interest thereon is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁸

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By unlawfully discharging Gloria Andrades and Miguel Montalvo, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c)

⁸ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER⁹

The Respondent, Hotel Holiday Inn de Isla Verde, Carolina, Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee for engaging in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act:

(a) Offer to Gloria Andrades and Miguel Montalvo immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent employment, and make them whole for any loss of pay they may have suffered as a result of the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and social security records and reports and all the records necessary to analyze the amount of backpay due herein.

(c) Post at its hotel facilities at Carolina, Puerto Rico, copies in both English and Spanish of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 24, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."